



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-14

SUBJECT: HAROLD J. KEATON
COUNTY COMMISSIONER, DISTRICT B
LINCOLN COUNTY BOARD OF COMMISSIONERS

A. JURISDICTION:

In his capacity as a member of the Lincoln County Board of Commissioners, Harold J. Keaton is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-14, submitted by Lincoln County Deputy District Attorney Dylan Frehner, received March 16, 2006; reviewed electronic facsimile of letter dated October 6, 2006, from Lincoln County Deputy District Attorney Dylan Frehner (TAB B)
- Reviewed Waiver of Statutory Time Requirement received April 5, 2006, and Mr. Keaton's response received April 21, 2006 (TAB C)
- Reviewed the following records of the Lincoln County Board of Commissioners meetings submitted as exhibits to both the complaint and response (Agendas, Excerpted Minutes, TAB D):
 - September 19, 2005, Agenda and Minutes;
 - March 6, 2006, 2006, Agenda and Minutes
- Reviewed copies of the following documents (TAB E):
 - Nevada Secretary of State records regarding Sierra Asset Management, Inc., listing Harold J. Keaton as president, secretary, treasurer and resident agent
 - Quitclaim Deed conveying the parcel known as "APN 13-041-17: Lot 19 in the Highland Knolls Subdivision" from the Lincoln County treasurer to Sierra Asset Management, Inc.
 - Joint Tenancy Deed conveying the parcel known as "APN 13-041-17: Lot 19 in the Highland Knolls Subdivision" from Sierra Asset Management, Inc., to Art and Janet Cameron

- Plat maps of Highland Knolls Subdivision, tax assessor printout of partial list of owners, submitted as exhibits to both the complaint and the response
- Affidavits of Highland Knolls property owners Jim Lefevre, Kelly Peterson, and Rex Shurtz submitted as exhibits to the response
- Conducted telephone interview of Steve Chouquer, Director, Lincoln County Road Department
- Reviewed prior relevant opinions of the NCOE (TAB F)

C. RECOMMENDATIONS:

Based on investigative activities, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (2)
- NRS 281.501 (2)

SPECIFIC REASON:

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by this public officer of the above provisions of NRS Chapter 281.

Based on investigative activities, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.501 (4)

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

This complaint, submitted by Lincoln County Deputy District Attorney Dylan Frehner, was received March 16, 2006. The complaint alleges violations of NRS 281.481(2), 281.501(2), and 281.501(4) by Harold J. Keaton, member, Lincoln County Board of Commissioners. Mr. Keaton is alleged to have violated the Ethics in Government law as a result of the following:

At its regular meeting held on September 19, 2005, the Lincoln County Board of Commissioners considered agenda item 16 regarding road improvements in the area known as the Highland Knolls Subdivision. This was a contested issue as to whether the board should take on the responsibility of chip sealing these roads. Mr. Keaton made the following motion, as recorded in the minutes of the meeting: “to direct the supervisor of the Road Department to proceed on bringing

the roads up to spec and getting them chip sealed if the weather permits (to be completed by the spring), including the easement from (highway) 93, up to Barbara (Street), Barbara (Street) up to the road that ties into Barbara (Street), down Jane (Street), and across to Sharon (Street) where the right-of-way is, and down Sharon (Street) to existing oil with the county being fiscally responsible.”

Mr. Keaton owns Sierra Asset Management, Inc., which owned the parcel known as “APN 13-041-17: Lot 19 in the Highland Knolls Subdivision” at the time the Lincoln County Board of Commissioners voted to make the road improvements specified in the motion he made. The southern boundary of the subject property is situated on a portion of Sharon Street; therefore, it was directly impacted by the board’s road improvement decision.

Sierra Asset Management, Inc., sold the subject property in January 2006.

E. SUMMARY OF SUBJECT’S RESPONSE:

Mr. Keaton submitted a *Waiver of Statutory Time Requirement* on April 5, 2006, and a written response on April 21, 2006. The following is the substance of Mr. Keaton’s response to the allegations:

Mr Keaton is the President of Sierra Asset Management, Inc., a Nevada corporation. The corporation owned a parcel of land (APN 013-041-17) from April 19, 2002, until January 30, 2006. This five-acre parcel is located on Sharon Street in the Highland Knolls development in Lincoln County.

At its September 19, 2005, meeting, the Lincoln County Board of Commissioners discussed the issue of improvement and construction of roads in the Highland Knolls development. Chairman Rowe stated several times during the discussion that these improvements had been previously scheduled. (The previous scheduling of the road improvements occurred before Mr. Keaton was elected to office, but Mr. Keaton is not certain of the specific timeframe.) After about 50 minutes of deliberation, Mr. Keaton made a motion to direct the Supervisor of the Road Department to proceed with this project.

Mr. Keaton did not disclose the corporation’s ownership of the land parcel because the road project approved by the commission at its September 19, 2005 meeting did not include frontage along the parcel owned by his corporation. The portion of the road intended to be constructed on Sharon Street turns south, approximately 1660 feet from the parcel and continues in a direction away from the parcel.

An item to review/repeal/ratify the commission’s decision to make road improvements in the Highland Knolls development was placed on the March 20, 2006, agenda and presented by Lincoln County Deputy District Attorney Dylan Frehner. Mr. Frehner informed the commission that there was a conflict-of-interest regarding the commission’s decision at its September 19, 2005, meeting. (Mr. Frehner stated that one of the board members owns property or an interest in property

along the roadway.) Mr. Keaton stated that his name was not mentioned during the deliberation; however, when the vote was taken, Mr. Keaton was compelled to abstain and state the reason for the abstention.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

* * * * *

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

* * * * *

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

* * * * *

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Factual History:

The road improvements that were actually completed in the Highland Knolls Subdivision differ from the improvements that appear to have been originally proposed by the Lincoln County Board of Commissioners at its September 19, 2005 meeting. The roadways were graded with type-2 fill and gravel materials, but at its March 20, 2006 meeting, the board suspended further upgrading, such as chip-sealing the roads, until it can be determined if a special improvement district (SID) should be established within the subdivision to help finance the road paving project.

The actual improvement to Sharon Street ultimately does run along the southern border of the parcel that was owned by Mr. Keaton’s corporation. This was done to accommodate a change in the placement of the roadway connecting Sharon Street to Jane Street. Steve Chouquer, Director, Lincoln County Road Department, stated that the decision was made to connect Sharon and Jane Streets at Ruby Street because the topography made it physically impossible to use the easement originally intended to be used to connect the two streets.

Although a portion of the Sharon Street improvements are contiguous to the southern border of the subject parcel, Mr. Frehner, Mr. Keaton, and Mr. Chouquer all agree that the subject parcel’s topography precludes access to the parcel from Sharon Street.

Since the March 20, 2006, board meeting, no further roadwork has been done by the Lincoln County Road Department, and no further decisions have been made by the Lincoln County Board of Commissioners regarding this project.

In a fax dated October 6, 2006, and directed to the Commission on Ethics staff, Mr. Frehner stated, in part:

“As a result of our conversation and a review of the law, it is the opinion of the Lincoln County District Attorney’s Office that Commissioner Keaton did not receive any benefit different from the other residents of the Highland Knolls subdivision. Although this office still believes that Commissioner Keaton should have disclosed his ownership interest in land affected by the decision to improve roads in the subdivision, we recognize that he did not receive any extraordinary benefit.”

H. CONCLUSION:

Allegations regarding NRS 281.481(2):

Mr. Keaton asserts that the roadway improvements originally approved by the board of commissioners did not include any roadway adjacent to the parcel owned by his corporation. Further, although a portion of the Sharon Street improvements ultimately became contiguous to the southern border of the subject parcel, due to the necessity to relocate the proposed street to connect Sharon and Jane Streets, Mr. Frehner, Mr. Keaton, and Mr. Chouquer all agree that the subject parcel’s topography precludes access to the parcel from Sharon Street. Therefore, it appears that neither Mr. Keaton nor his corporation received any privilege, preference, exemptions or advantage from the board of commissioners’ decision on the intended road improvements.

The Executive Director finds that credible evidence does not exist to substantiate a potential violation of NRS 281.481(2). Accordingly, the Executive Director recommends the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Keaton violated the provisions of NRS 281.481(2).

Allegations regarding NRS 281.501(2):

In the instance of the September 19, 2005, meeting, agenda item 16, Mr. Keaton made no disclosure of his interest in Sierra Asset Management, Inc., which owned the subject parcel located within the Highland Knolls subdivision. Further, he did not abstain from participation in the agenda item discussion and he voted.

On March 20, 2006, the decision made by the board of commissioners at its September 19, 2005, meeting was revisited at the behest of Lincoln County Deputy District Attorney Frehner. He informed the board of a conflict of interest resulting from Mr. Keaton’s ownership interest. Mr. Keaton then abstained on the re-vote and stated his reason for doing so.

NRS 281.501(2) instructs that it must be presumed that the independence of judgment would not be materially affected where the resulting benefit to himself or to his commitment in a private capacity to the interests of others is not greater than that accruing to any other member of the general business, profession, occupation, or group.

There is no evidence within the record that Mr. Keaton would have any greater benefit accruing to himself or to other persons to whom which he is committed in a private capacity, than would accrue to any other parcel owner within the subdivision.

The Executive Director finds that credible evidence **DOES NOT EXIST** to substantiate a potential violation of NRS 281.501(2).

Allegations regarding NRS 281.501(4):

According to NRS 281.501(4), the fact that Mr. Keaton is the owner of Sierra Asset Management, Inc. would, in and of itself, require Mr. Keaton to sufficiently disclose his pecuniary interest before acting upon any matter pertaining to the parcel. Based upon this undisputed fact, and relying on Commission Opinion 99-56 (*Woodbury*), Mr. Keaton, after disclosing sufficient information concerning his interest in the parcel, should have determined whether the independence of judgment of a reasonable person in his situation would have been materially affected by his interest in the parcel. If so, Mr. Keaton should have abstained from voting or otherwise acting upon the matter.

There is no evidence within the record, either submitted with the complaint or uncovered in the investigation, that Mr. Keaton made any disclosure at the September 19, 2005, meeting, before acting upon the matter.

The Executive Director finds that credible evidence does exist to substantiate a potential violation of NRS 281.501(4). Accordingly, the Executive Director recommends the panel find just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Keaton violated the provisions of NRS 281.501(4).

Prepared by: Matt C. DiOrio DATED: 11/2/06
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: 11/2/06
L. PATRICK HEARN
EXECUTIVE DIRECTOR